

Bortolotti v. Universal Terrazzo and Tile Company

Case Number

A-17-1024

Court Number

Douglas

Call Date

September 13, 2018

Case Time

1:30 PM

Case Audio

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Case Summary

Nebraska Workers? Compensation Court, Judge Julie A. Martin

Attorneys for Appellants: John W. Illiff & Adam J. Wachal (Gross & Welch PC, LLO)

Attorneys for Appellee and Cross-Appellant: John F. Thomas & Jay D. Koehn (McGrath, North, Mullin & Kratz, PC, LLO)

Civil Action: Worker?s Compensation

Actions Taken by Trial Court: The compensation court entered an order awarding benefits to Bortolotti, finding that he sustained a compensable injury to his left shoulder arising out of and in the course of his employment with Universal. The court awarded Bortolotti \$10,589 for past medical expenses that other insurance providers paid. Exhibit 36, which detailed Bortolotti?s account history at Omaha Orthopedic and Sports Medicine, P.C., described \$9,528 of those expenses. The court overruled Universal?s objections to exhibits 36, 39, and 40, but declined to rely on exhibits 37, 40, and 41 in calculating past medical expenses because those exhibits were not ?itemized bills? under Workers? Comp. Ct. R. of Proc. 10 (2018). Noting Bortolotti?s testimony that he personally paid \$9,849.38 for his medical expenses, the court found he should be reimbursed for his out-of-pocket expenses in that amount. The court also awarded future medical benefits that are reasonable, necessary, and causally related to the work-related injury. Last, the court found that Bortolotti was entitled to the maximum compensation rate and would receive \$728 weekly from Universal for 33.75 weeks, a total permanency benefit of \$24,570.

Assignments of Error: Universal assigns, consolidated and restated, that the workers? compensation court erred in (1) calculating Bortolotti?s average weekly wage; (2) overruling objections to exhibits 36, 40, and 39; (3) awarding Bortolotti future medical benefits; and (4) awarding out-of-pocket past medical expenses to Bortolotti as well as calculating Bortolotti?s other past medical expenses.

Bortolotti assigns on cross-appeal, restated, that the workers? compensation court erred in (1) declining to rely on exhibits 37, 40, and 41 when it calculated past medical expenses and (2) calculating the amount it awarded Botolotti for past medical expenses.

Extended Case Summary

A-17-1024, Terry Bortolotti v. Universal Terrazzo & Tile Company and Acuity Insurance Company

Trial Court: Nebraska Workers? Compensation Court, Judge Julie A. Martin

Background: Bortolotti has worked for Universal Terrazzo & Tile Company (Universal) for most of his life, becoming its sole stockholder and president in 2011. He filed a petition alleging he sustained a left-shoulder injury. Acuity Insurance Company (Acuity) was Universal?s workers? compensation insurance provider at the time. Bortolotti saw a physician, who found and treated a tear in Bortolotti?s left rotator cuff. Bortolotti sent the expenses for the treatments to Universal?s former workers? compensation insurance provider. That company started paying Bortolotti?s treatments, but stopped when it found out that Acuity was responsible for them. Bortolotti then sent bills for his left-shoulder treatments to his health insurance provider and personally paid the portions of those bills that the health insurance policy required him to pay. At trial, the court received a letter from the physician explaining

that Bortolotti will require future imaging scans for his injury, an invoice from the physician, payment records from Universal's former compensation insurance provider and Bortolotti's health insurance provider, a document summarizing medical expenses related to Bortolotti's treatments and the person or company who paid those expenses. The court received little evidence about Bortolotti's wages from Universal.

The compensation court found Bortolotti sustained a compensable injury to his left shoulder. The court declined to rely on Bortolotti's summary of his medical expenses or documents from Universal's former workers' compensation insurance provider and Bortolotti's health insurance provider when calculating his past medical expenses. But the court still awarded Bortolotti past medical expenses using other evidence. The court further held that Universal and Acuity should reimburse Bortolotti for the amount he personally paid for his medical expenses. The court also awarded future medical benefits. Last, the court held that Bortolotti should receive \$728 weekly from Universal for 33.75 weeks to make up for the wages he lost due to his left-shoulder injury.

The Nebraska Court of Appeals will consider the following issues that Universal and Acuity raised:

1. Did the workers' compensation court miscalculate Bortolotti's average weekly wage?
2. Was it wrong for the workers' compensation court to receive the invoice from Bortolotti's physician, the letter from that physician, and records of bills Bortolotti's health insurance company paid?
3. Was it wrong for the workers' compensation court to award future medical benefits?
4. Did the court miscalculate Bortolotti's past medical expenses? And was it wrong for the workers' compensation court to find that Bortolotti should be reimbursed for the amounts he personally paid for treatments to his left shoulder?

The Nebraska Court of Appeals will also consider the following issues that Bortolotti raised:

1. Should the workers' compensation court have used records of payments from Universal's former workers' compensation insurance provider and Bortolotti's health insurance provider when it calculated past medical expenses? And should the worker's compensation court have used the summary of expenses that Bortolotti put together when it calculated his past medical expenses?
2. Did the workers' compensation court err in calculating the amount it awarded Bortolotti for past medical expenses?

Attorneys: John W. Illiff & Adam J. Wachal (Gross & Welch PC, LLO) (for appellant Universal Tile & Terrazzo Co. and Acuity Ins. Co.); John F. Thomas & Jay D. Koehn (McGrath, North, Mullin & Kratz, PC, LLO) (for appellee and cross-appellant Bortolotti)

Case Location

York College

Court Type

WCC

Schedule Code

A2

Panel Text

Moore, Chief Judge, Bishop, and Arterburn, Judges
